

PATRICK PORGANS & ASSOCIATES

GOVERNMENT REGULATORY INTERVIEW

ECOLOGISTIC RESOURCE CONVERGENCE

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May 1, 2001

PROJECT: DEPARTMENT OF WATER RESOURCES OROVILLE FACILITIES RELICENSING — PLENARY MEETING

SUBJECT: PORGANS & ASSOCIATES' PERSPECTIVE, CONCERNS AND SUGGESTIONS REGARDING THE ALTERNATIVE LICENSING PROCESS — EMPHASIS ON SHARING INSIGHT ON PROCESS, PARTICIPATION AND LEADERSHIP

Refer to Plenary Agenda Item: VI – Perspective on Progress of Relicensing Process

1 Porgans & Associates (P&A) would like to thank the Department of Water Resources (DWR) and members of
2 the Plenary Group for providing this opportunity to share our perspective, concerns and suggestions regarding
3 the progress of the relicensing process.

4 Since the onset of the Oroville Facilities Relicensing process, P&A has participated in this project at the
5 directive of its clients, to protect their respective interests. It is important to note, that P&A, was one of several
6 participants that took the time to send a letter to Federal Energy Regulatory Commission's (FERC), Secretary
7 David P. Boergers, stating our position regarding the DWR's request to obtain federal approval to use the
8 Alternative Licensing Process (ALP) for the relicensing of the State Water Project's (SWP) Oroville facilities.¹
9 A copy of P&A's letter to FERC, is attached.

10 DWR's request to use the ALP was noticed by FERC on December 1, 2000, in which it states the following:

11 *"The alternative procedures are intended to simplify and expedite the licensing process by*
12 *combining the pre-filing consultation and environmental review process into a single process, to*
13 *facilitate greater participation, and to improve communication and cooperation among the*
14 *participants."*

15 As you will note in our letter to FERC, it states:

16 *P&A intends to participate in the relicensing of the Oroville facilities, as per our client's directive.*
17 *However, as you know, the ALP is a relatively new process, which few participants have had the*
18 *opportunity to experience; therefore, in the absence of an actual experience, it is difficult to place*
19 *any level of confidence in such a process. Nevertheless, the initial meetings sponsored by DWR give*
20 *P&A the impression those department officials, interacting with the public, appear to be sincere,*
21 *open and genuinely concerned. Over the last 30 years, it has been P&A's policy to give the*
22 *government the benefit of the doubt, in similar untried circumstances, and with a few unfortunate*
23 *instances, this policy has been fruitful. In light of the aforementioned circumstances, P&A does not*
24 *oppose DWR's request to use the ALP, and we are hopeful that the department's current demeanor*
25 *will be sustained throughout the entire relicensing process. P&A will participate in the process and*

¹Patrick Porgans' letter (Certified Mail: 7000 0520 0020 5876 2655) to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, RE: PORGANS & ASSOCIATES' RESPONSE TO THE CALIFORNIA DEPARTMENT OF WATER RESOURCES' REQUEST TO USE ALTERNATIVE PROCEDURES IN PREPARING A LICENSE APPLICATION TO THE FEDERAL ENERGY REGULATORY COMMISSION, Dec. 22, 2000.

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1 *support the DWR in its relicensing effort, as a means to resolve our client's legitimate concerns*
 2 *relative to the construction and operation of DWR's Oroville facilities. Albeit, the only way that*
 3 *P&A will depart from this commitment is if DWR should fail to conduct itself in a manner consistent*
 4 *with its trust responsibilities to both the public and private sectors, then we will use all other*
 5 *available administrative remedies, in accordance with due process of law, to protect our client.*

6 **P&A Reminds the Group That the ALP (Process) is Premised on the Following Factors:**

7 **Simplify & Expedite the Process and Facilitate Greater Participation, Communication and Cooperation**

8 Over the last several months, those involved in this process are to be commended for their input and
 9 commitment to participate. The process is, to say the least, a monumental undertaking that could bury
 10 the best of minds in a seemingly relentless onslaught of never-ending procedural, technical and
 11 environmental review and related issues. Nevertheless, with a collective will and the spirit of cooperation,
 12 those issues, although challenging, are not insurmountable. However, it is imperative that we not lose
 13 sight of the premise upon which the ALP is founded, and I quote:

14 *"....to simplify and expedite the licensing process by combining the pre-filing consultation and*
 15 *environmental review process into a single process, to facilitate greater participation, and to*
 16 *improve communication and cooperation among the participants."*

17 **Is the ALP Facilitating Greater Participation — Improved Communications Among Participants?:**

18 P&A will focus its discussion and review of the process on the aforementioned factors, i.e., its
 19 simplification, expeditiousness, its ability to facilitate greater participation and its effectiveness to
 20 improve communication and cooperation among participants.

21 P&A came into this process with an open mind, and has participated in good conscience, recognizing the
 22 importance of giving the government the benefit of the doubt until there was reason to believe
 23 otherwise. Now we have questions and reasonable doubts that need to be reconciled in order for us to
 24 continue to participate in this process.

25 **There is no question that the ALP is breaking new ground. The question that P&A and others have**
 26 **raised since the onset of this process: Is the process providing a level-playing field for all of the**
 27 **participants?**

28 Based upon my participation in this process, and discussions with other participants, the answer to that
 29 questions appears to be in doubt. There is a growing participatory imbalance between those that can and
 30 cannot afford the time, commitment and expense required to effectively participate in the ALP. There
 31 has been a slow but noticeable decrease in the number of local citizens' attendance and/or active
 32 participation in the process, and there is an exponential shift in the balance of power, weighted in favor

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1 of government and SWP contractors. I respectfully refer you to a statement contained within the
 2 Protocols:

3 *Decision Making: Consensus. In this relicensing, the Protocols adopt the FERC's definition in its ALP*
 4 *rulemaking wherein consensus is defined as the (weight of) governing opinion."*

5 As you will recall, and the record should attest, P&A raised this concern early on in the process, and
 6 suggested, along with others, that alternative funding sources be explored by the government to
 7 reconcile this inequity. While some attempts have been made by DWR to explore funding sources, the
 8 probability of sustainable funding for such a purpose does not appear promising.

9 It stands to reason, that based on DWR's proposed ALP schedule, there are more meetings than there
 10 are weeks in the year, which will undoubtedly add to the ongoing reduction in local participation.
 11 Nongovernmental participants, specifically local interest participants, can view this process as a whittling
 12 down process; **whether intentional or nonintentional**, it does not matter, the end results are the same
 13 --- a loss of confidence and local participation in the process. **These effects are also inconsistent with**
 14 **those factors upon which the ALP is premised.**

15 There is no question that DWR is undertaking a monumental task, and should be commended for its
 16 attempt to provide a forum for public participation. However, the sheer size and length of time involved
 17 in the process, for the average citizen, is to say the least overwhelming. The "breakneck" pace and
 18 bureaucratic regulatory and procedural requirements are daunting and alienating to those unfamiliar with
 19 the process. There is also no question that procedural processes, organizational issues and identifying
 20 and prioritizing projects of concern to the participants, while all of this is happening, for some of us,
 21 it is like watching a train leaving the station and having the distinct feeling that we may not be able to
 22 get on board. It is important that this matter be corrected now.

23 As a professional, I have 30 years of experience of interacting with government processes on a vast array
 24 of projects, and the demands associated with this project are taxing even my capabilities. Legitimate
 25 questions have been raised by participants regarding the facilitator's ability to be fair and impartial,
 26 recognizing the fact that payment for such services is derived from DWR. P&A has also brought this
 27 matter to the attention of the Plenary Group and the facilitator, and noted its concerns accordingly.

28 At the last Plenary meeting, I picked up a four-page handout, entitled: **"Are You a Delphi Target?"** It
 29 provides insight into the role of certain types of techniques that facilitators are taught to employ in a
 30 forum such as this. Ironically, after having had the opportunity to read that handout, it became apparent
 31 that some of the techniques referred to in that Delphi paper appear to be going on here. For example,

32 A. Issues of concerns are raised by certain participants and yet the facilitator moves on without
 33 allowing for an adequate dialogue or consideration.

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- 1 **B. Other participants have shared their concerns that they are being ignored while people are**
2 **pretending to listen.**
- 3 **C. The process is overwhelming participants and wearing them down without providing them with**
4 **adequate responses to their questions and concerns.**
- 5 **We can all debate the percent of what is perceived and/or real relating to those concerns; however, the**
6 **fact that those issues have been raised, requires that they be reconciled if the group is to proceed in**
7 **accordance with those factors upon which the ALP are premised.**
- 8 **It took P&A four months to get the government to Identify the Scope of the Project and Those**
9 **Issues that Are Within and Outside of the FERC Process.** The Initial Information Package (IIP)
10 states on page ES1: *"The California Department of Water Resources (DWR) is the owner and operator*
11 *of the Oroville Facilities², a multipurpose water supply, flood control, power generation, recreation and*
12 *wildlife, and salinity control project. The facilities operate under a license from the Federal Energy*
13 *Regulatory Commission (FERC, or Commission)."* Ironically, they are essentially the same facilities/project
14 that would have been inclusive in the initial license obtained by DWR, nearly 50 years ago.
- 15 **At the April Plenary group meeting, FERC's representative, Jim Fargo, conceded to P&A that all of the**
16 **aforementioned uses for the Oroville Facilities are inclusive in the licensing process. Therefore, all of**
17 **those uses and related impacts need to be addressed, individually and collectively.**
- 18 **As has been stated, there are other related factors, issues and concerns that are of importance to the**
19 **local participants, which maybe outside of the FERC relicensing process. It is no mystery that they**
20 **undoubtedly would be best suited in providing that information. Perhaps it may be in the interest of all**
21 **concerned to solicit a specific set of issues of concern to local, preferably prioritized, accompanied by**
22 **a plan that contains an outline of what they want out of this process. Such a plan could serve as a**
23 **reference guide to DWR and its water contractors throughout the entire process.**
- 24 **P&A has consistently asked DWR officials to provide information regarding the source of funding for this**
25 **project. Are these reimbursable costs or nonreimbursable costs to the contractors or are they both?**
26 **We asked but have not received an estimate on the amount of money budgeted and expended to date by**
27 **the DWR on this process. In addition, P&A asked what the estimated projected costs for this process**
28 **and related studies and expenses are anticipated over the next several years. P&A understands and**
29 **appreciates the fact that there are a lot of unknown variables associated with the costs, estimates, and**
30 **expenditures associated with a project of this magnitude; however, it is important that DWR provide**
31 **such an estimate.**

² For the purposes of this document the term "Oroville Facilities," refers to elements of the State Water Project Oroville Division, identified in Federal Energy Regulatory Commission License Project No. 2100.

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1 **Fair Shake or a Raw Deal:** In any such process, participants anticipate a fair shake, and are skeptical
2 about getting a raw deal. Without belaboring the historical shortcomings of the State Water Project
3 as it relates to local concerns, some have viewed the government's commitment as a series of broken
4 promises. However, it is not P&A's intention, at this time, to address the benefits and drawbacks
5 associated with the project, simply to remind the government that the success of this process is
6 contingent upon the level of confidence we have in it.

7 I am sharing what I have witnessed as a participant, in the sincere hope that this window of opportunity
8 will remain open, as a means to resolve any existing and/or potential conflicts, which would resolve the
9 impression that this may be just another done deal.

10 It stands to reasons that it is in the best interest for all concerned to work to facilitate a cost-effective
11 and environmentally sound resolution that serves the common good.

12 My observations, participation and interaction with other nongovernmental participants support the
13 position that the process is creating a rift between various factions. More important, unless some
14 adjustments and assurances are forthcoming, it may have serious and irreparable implication that could
15 jeopardize the success of the ALP.

16 **As stated, in one sense much has been accomplished; however, we must ask ourselves at what cost.**
17 As a local participant, I appeal to other local participants, who are sincerely interested in wanting to make
18 this process work, if it would be in our interest to meet as a caucus, to discuss such matters among
19 ourselves.

20 Perhaps such a meeting/caucus will enable us to decide how we should proceed in presenting our collective
21 concerns, views and recommendations to the group as a whole. Such an action would be conducted in good
22 conscience and with an open mind to reconcile the growing disparities that can be perceived as impeding
23 meaningful participation in the ALP.

24 **Such an action should not be construed as a departure from the process, rather as a good faith**
25 **gesture to assist the department in sustaining the alternative licensing process as a fair and**
26 **equitable process for all concerned.**

27 Having said that, I solicit input, especially of the local participants, and your suggestions. I respectfully
28 reserve the right to respond to questions and comments raised by other participants. Thank you.

29 Respectfully,

30 Patrick Porgans
31 PP:sp fnl: 11 jemferc.wincor

PATRICK PORGANS & ASSOCIATES

GOVERNMENT REGULATORY

WATER RESOURCE CONVERGENCE

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December 22, 2000

Certified Mail: 7000 0520 0020 5876 2655

David P. Boergers, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

COPY

**RE: PORGANS & ASSOCIATES' RESPONSE TO THE CALIFORNIA DEPARTMENT OF WATER RESOURCES' REQUEST TO USE
ALTERNATIVE PROCEDURES IN PREPARING A LICENSE APPLICATION TO THE FEDERAL ENERGY REGULATORY COMMISSION**

Dear Secretary Boergers:


Porgans & Associates' (P&A) are writing on behalf of our client, J.E.M. Farms to formally notify the Federal Energy Regulatory Commission (FERC) of our position pertinent to the California Department of Water Resources' (DWR) request to receive approval to use the alternative licensing procedures (ALP) to prepare a new license application (Project No. 2100, Oroville Project, Feather River Watershed, Butte County, California.) DWR's request to use the ALP was noticed by FERC on December 1, 2000, in which it states the following:

"The alternative procedures are intended to simplify and expedite the licensing process by combining the pre-filing consultation and environmental review process into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants. ... DWR intends to file 6-month progress reports during the alternative procedures process that leads to the filing of a license application by January 31, 2005."

P&A intends to participate in the relicensing of the Oroville facilities, as per our client's directive. However, as you know, the ALP is a relatively new process, which few participants have had the opportunity to experience; therefore, in the absence of an actual experience, it is difficult to place any level of confidence in such a process. Nevertheless, the initial meetings sponsored by DWR give P&A the impression those department officials, interacting with the public, appear to be sincere, open and genuinely concerned. Over the last 30 years, it has been P&A's policy to give the government the benefit of the doubt, in similar untried circumstances, and with a few unfortunate instances, this policy has been fruitful. In light of the aforementioned circumstances, P&A does not oppose DWR's request to use the ALP, and we are hopeful that the department's current demeanor will be sustained throughout the entire relicensing process. P&A will participate in the process and support the DWR in its relicensing effort, as a means to resolve our client's legitimate concerns relative to the construction and operation of DWR's Oroville facilities. Albeit, the only way that P&A will depart from this commitment is if DWR should fail to conduct itself in a manner consistent with its trust responsibilities to both the public and private sectors, then we will use all other available administrative remedies, in accordance with due process of law, to protect our client.

As required by FERC, eight additional copies of this letter are enclosed. Please be advised that P&A wants to be informed of any and all notices, actions and related activities pertinent to the re licensing of Project No. 2100. Please address all correspondences to my attention. Thank you.

Respectfully,



Patrick Porgans
PP:sp fnl: 11 jemferc.wincor

cc: List Attached
Enclosures